

# **WISHA REGIONAL DIRECTIVE**

**WISHA Services**

**Department of Labor and Industries**

## **5.25**

# **FIRST AID TRAINING IN GENERAL INDUSTRY & AGRICULTURE**

**DATE: July 18, 2003**

### **I. Background**

The Department of Labor and Industries (L&I) has historically maintained rules under the Washington Industrial Safety and Health Act (WISHA) requiring that first-aid trained employees be available at all Washington worksites. These requirements have been based on the rulemaking authority of RCW 49.17.040 and RCW 49.17.050, including the requirement in subsection (2) that L&I adopt “occupational safety and health standards which are at least as effective as those adopted” by the federal Occupational Safety and Health Administration (OSHA).

Even before the passage of WISHA, the Washington Legislature addressed first-aid training within the Industrial Insurance Act. RCW 51.36.030 and its predecessors have for decades included the requirement that “Every employer who employs fifty or more workers...shall cooperate with the department in training one or more employees in first aid to the injured....” Since the passage of WISHA, L&I has included the requirements found in RCW 51.36.030 in the more comprehensive rules adopted under RCW 49.17, but the department has not limited the first-aid training rules adopted under WISHA to those found in the industrial insurance statute. In particular, L&I has historically required all employers, not only those with “fifty or more workers,” to have a first-aid trained employee on site. The requirements of RCW 49.17 and RCW 51.36.030 were seen as complementary, not in conflict, with one another.

In 1997, L&I worked with stakeholders, including several business groups, in redesigning the first aid rules to provide greater flexibility for relatively low-risk employers. Throughout this successful effort, which led to the inclusion of the optional First Aid plan in the rules that took effect in June of 1998, no stakeholder concerns were raised about potential conflicts with the language of RCW 51.36.030.

However, in 1997 L&I had cited National Security Consultants, an employer with fewer than 50 employees, for failure to provide first-aid trained individuals under what was then WAC 296-24-060(2). The employer appealed. Although the rule was replaced with the more flexible WAC 296-24-061 in 1998 and then with WAC 296-800-15005 in 2001, the employer's appeal continued to work its way through the courts. The Board of Industrial Insurance Appeals found that WAC 296-24-060(2) was invalid because it exceeded the requirements of RCW 51.36.030 (even though it was adopted under the authority of RCW 49.17).

Ultimately, L&I lost the case before Division II of the Court of Appeals. The court viewed the issue as a simple conflict between a statute – RCW 51.36.030 – and a rule, with the statute trumping the rule. It did not consider that the Board's reading of RCW 51.36.030 as a maximum requirement places that law in conflict with language in RCW 49.17.050(2) requiring WISHA rules to be at least as effective as those adopted by OSHA (OSHA's general first aid requirement, 29 CFR 1910.151 is not dependent upon employer size). In addition, certain L&I arguments were not considered because they had not been part of the original record.

The court's decision and the apparent conflict between two statutes leave L&I with a dilemma. In its initial evaluation of the issue, the department concluded that the most appropriate course was to revise the general first-aid training requirements to conform to the court's decision, and that decision was reflected in the original WISHA Regional Directive (WRD) 5.25, issued November 13, 2002. In addition, the original WRD put into place a moratorium on the enforcement of the agriculture and general industry first-aid training rules until rulemaking on the subject was completed.

As with all policies, WRD 5.25 was submitted to federal OSHA as a State Plan Change. Region X OSHA has rejected the planned change and advised L&I that both the policy and the planned rulemaking would violate the requirement that our rules be at least as effective as those adopted by federal OSHA. Based on this guidance from federal OSHA, and in order to comply with the clear requirement of RCW 49.17.050(2) that L&I rules be at least as effective as federal rules, L&I now plans to propose a rule that would replace the existing first aid training requirements in WAC 296-800-15005 (general industry) and WAC 296-307-03905 (agriculture) with a reference to the federal first aid training requirement. This revised directive provides guidance to regional staff until such a change is made to the rule itself.

## **II. Scope**

This policy provides guidance to WISHA staff regarding the application of the first-aid training requirements to employers in general industry and agriculture with fewer than 50 employees. Although the background has been changed to reflect current rulemaking plans, the policy guidance is substantively identical to that found in the previous WRD 5.25, issued on November 13, 2002, which this policy replaces.

### **III. Application Guidance**

*1. How will WISHA enforce the first-aid training requirements in general industry and agriculture when dealing with employers with fewer than 50 employees?*

WISHA enforcement and consultation staff must not cite employers for violations of the first-aid training requirements found in WAC 296-800-15005 and WAC 296-307-03905 if the employers in question have fewer than 50 employees in Washington state. The first aid training requirements will continue to be enforced for all employers having 50 or more employees in Washington state.

*2. How will citations currently under appeal be handled?*

Any citation currently under appeal should be modified to conform to the enforcement expectations found in #1 above (which were first put in place November 13, 2002).

*3. What about other first-aid issues, such as first aid kit requirements?*

Other first-aid requirements are not affected by this policy (or by the court's decision). For example, the first aid supply requirements found in WAC 296-800-15020 and WAC 296-307-03915, as well as the first aid station requirements found in WAC 296-800-15025 and WAC 296-307-03920, remain in effect and subject to full enforcement.

Approved: \_\_\_\_\_

Michael Wood

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For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 or by telephone at (360)902-5503. You also may review policy information on the WISHA Website (<http://www.wa.gov/lni/wisha>).